IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5516 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANAKSINH @ GODHAVI MANSINH VAGHELA - Petitioner(s)
Versus
COMMISSIONER OF POLICE- AHMEDABAD CITY & 2 - Respondent(s)

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Appearance :
MR RAKESH B SHARMA for Petitioner(s) : 1,
Mr LR Pujari, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 12/12/2007

ORAL JUDGMENT

1. By way of this petition, the petitioner detenu, has challenged the order dated 7.2.2007 passed by the

Commissioner of Police, Ahmedabad City, in exercise of powers under section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1085 (for short, 'the Act') declaring the petitioner to be a “bootlegger” within the meaning of the PASA Act. In pursuance of the said impugned order the petitioner is detained in jail since 7.2.2007.

2. From the grounds of detention, it appears that there are three offences – CR. I. No. 5250 of 2006, 5006 and CR.I. No. 5016 of 2007 registered against the petitioner under sections 66 B, 65 E, 81 etc. under the Bombay Prohibition Act wherein quantity of 8 litres, 20 litres, 200 litres, 35 litres and 7 litres respectively of country liquor was found from his possession. On the basis of registration of these cases, the detaining authority held that the present detenu, was carrying activities of selling country liquor which is harmful to the health of the public. It is held by the detaining authority that as he is indulged in illegal activities, it is required to restrain him from carrying out further illegal activities i.e. selling of country liquor. His representation was also not considered and was rejected by the detaining authority. Except the aforesaid cases under the provisions of Prohibition Act, no other offence

was registered against the present petitioner-detenu. In the opinion of this court, his activities are, by no stretch of reasoning, said to be disturbing the public order or even the public health suffers and such a subjective satisfaction is reached by the detaining authority. It is seen from the grounds that a general statement that has been made by the detaining authority that consuming liquor is injurious to health and except that, nothing is there on record showing that the activities of the petitioner arre affecting the public order. In fact, a perusal of the order passed by the detaining authority shows that the grounds which are mentioned in the order are in reference to the situation of 'law and order' and not 'public order'. Therefore, on this ground, the subjective satisfaction of the detaining authority is vitiated on account of non-application of mind the impugned order deserves to be quashed and set aside.

3. In the case of ***Ashokbhai Jivraj @ Jivabhai Solanki v Police Commissioner, Surat*** (2001 (1) GLH 393), having considered the decision of the Hon'ble Apex Court in the case of ***Ram Manohar Lohia v. State of Bihar*** (AIR 1966 SC 740), this court held that the cases, wherein the detention order passed on the basis of the statements of

the witnesses falls under the maintenance of 'law and order' and not 'public order'.

4. Considering the above decision, it is clear that before passing an order of detention of a detenu, the detaining authority must come to a definite finding that there is threat to the “public order” and it is very clear that the present case would not fall within the category of threat to a public order. In that view of the matter, when the order of detention has been passed by the detaining authority without having adequate grounds for passing the said order, cannot be sustained and, therefore, it deserves to be quashed and set aside.

5. In the result, this Special Civil Application is allowed. The order of detention dated 7.2.2007 passed by the Police Commissioner, Ahmedabad, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[M.D. SHAH, J.]

msp